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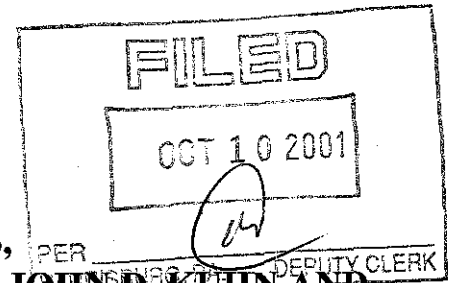
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WAYNE A. NOEL,
Plaintiff,

ORIGINAL

Civil Action No. 1:CV-01-1049
(Caldwell, J.)

Commonwealth of Pennsylvania, et al.
Defendants,



**MOTION OF DEFENDANTS,
PRESIDENT JUDGE OSCAR F. SPICER, JUDGE JOHN D. KUHN AND
THE ADAMS COUNTY COURT OF COMMON PLEAS
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants, President Judge Oscar F. Spicer, Judge John D. Kuhn, and the Adams County Court of Common Pleas, by and through their counsel, Mary E. Butler, Esquire, move this Court to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and in support thereof aver the following:

1. Plaintiff, Wayne A. Noel, an inmate incarcerated at the Adams County Prison in Gettysburg, Pennsylvania, filed this *pro se* civil rights action pursuant to 42 U.S.C. §1983 against the Commonwealth of Pennsylvania, the Conewago Police Department, Conewago Police Officer William Hartlaub, the Adams County Court of Common Pleas, Adams County Court of Common Pleas President Judge Oscar F. Spicer and Judge John D. Kuhn.

2. Plaintiff's complaint is based on two separate and distinct allegations. The first is that he did not get "a fair and equal trial (sic) on [his] D.U.I. charge in 1999..." and the second is that he "was not treated right when (sic) [he] was arrested (sic) for escape on 12/5/00." (Complaint §IV, pg.3).

3. As relief, Plaintiff states that he "would be glad if they investigated the accident (sic) check the vehicle out before charging me with D.U.I." and that what he wants "...the Court to do is to drop the escape charge on [him]...." (Complaint §V, pg.4).

3. The Court is compelled to dismiss Plaintiff's claims against President Judge Spicer and Judge Kuhn on the ground of judicial immunity.

4. The Court is compelled to dismiss Plaintiff's claims against the Adams County Court of Common Pleas on the ground that said Court is not a "person" for purposes of 42 U.S.C. §1983.

5. Plaintiff, a criminal defendant, has no civil rights cause of action for constitutional claims that would undermine his conviction until he has successfully vacated that conviction.

6. To the extent that Plaintiff seeks release from incarceration, he has not alleged that he has exhausted his remedies for habeas corpus purposes.

WHEREFORE, Defendants President Judge Oscar F. Spicer, Judge John D. Kuhn and the Adams County Court of Common Pleas, respectfully request that plaintiff's complaint against them be dismissed with prejudice

Respectfully submitted,



MARY E. BUTLER, ESQUIRE

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Attorney For Defendants

President Judge Oscar F. Spicer,

Judge John D. Kuhn, And The,

Adams County Court Of Common Pleas